

1  
2  
3  
4  
5  
6  
7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF OREGON

9 SPATCO, INC., )  
10 Plaintiff, ) No. CV-03-874-HU  
11 v. ) OPINION AND ORDER  
12 TESORO REFINING AND MARKETING )  
13 CO. and LOU DOBBINS, INC., dba )  
14 PIONEER ENERGY CO., )  
15 Defendants. )

16 Gary G. Linkous  
17 Gary G. Linkous, P.C.  
18 P.O. Box 636  
19 Welches, Oregon 97067  
20 Attorney for plaintiff

21 Milo Petranovich  
22 Charles F. Hudson  
23 Lane Powell Spears Lubersky  
24 601 Second Avenue Suite 2100  
25 Portland, Oregon 97204  
26 Attorneys for defendant Tesoro Refining and Marketing

27 HUBEL, Magistrate Judge:

28 This is an action for declaratory relief, in which Spatco,  
Inc. (Spatco) sought a declaration from the court that it properly  
terminated a contract entered into with Lou Dobbins, Inc., dba  
Pioneer Energy Company (Pioneer), for the purpose of selling the



1 petroleum products of Tesoro Marketing and Refining Company  
2 (Tesoro). Pioneer assigned the contract to Tesoro in June 2001.

3 In November 2004, the parties filed cross motions for summary  
4 judgment. Both parties failed to comply with the Local Rules  
5 governing summary judgment motions, leaving the record in poor  
6 condition for ruling on the legal arguments actually presented and  
7 raising some legal issues the parties failed to address. While the  
8 motions for summary judgment were pending, plaintiff requested  
9 leave to file an amended complaint and a second amended complaint.  
10 (doc. # 48, 58). On January 14, 2005, plaintiff withdrew both  
11 motions. (doc. # 62).

12 On February 28, 2005, the court granted in part and denied in  
13 part Spatco's motion for summary judgment, and denied Tesoro's  
14 motion for summary judgment, concluding, *inter alia*, that Spatco  
15 was entitled to a declaration that it properly terminated the  
16 contract (doc. # 70). On March 4, 2005, pursuant to the joint  
17 request of the parties, the court struck the scheduled pretrial  
18 conference and three-day jury trial. (doc. # 77). The parties were  
19 ordered to file simultaneous briefs on the issue of repudiation  
20 and/or rescission and set oral argument on the issue. (doc. # 77).  
21 On March 14, 2005, Tesoro filed a Response to Plaintiff's Concise  
22 Statement of Facts, Supplemental Concise Statement of Fact, and  
23 Supplemental Memorandum on Cross-Motions for Summary Judgment, all  
24 to be applied to the cross motions for summary judgment that the  
25 court had ruled on in February 2005 (doc. # 78, 79, 80). On March  
26 21, 2005, Spatco filed a motion to strike Tesoro's Response to  
27



1 Plaintiff's Concise Statement of Facts and the Affidavit of Donald  
2 Reese (doc. # 85).

3 On April 6, 2005, the court heard oral argument on the issue  
4 of repudiation and/or rescission. The court ordered the parties to  
5 submit further briefing on the issue by May 5, 2005 (doc. # 89).  
6 Tesoro submitted additional briefing, but Spatco did not.

7 Tesoro's position is that the agreement between the parties  
8 has been rescinded, and that the court should enter a judgment in  
9 its favor reflecting the uncontested amount of the payments  
10 received by Spatco, after deducting the offsets the court has  
11 determined in Spatco's favor. However, the amount of the payments  
12 received by Spatco, and the offsets determined in Spatco's favor  
13 have never been agreed upon by the parties.

14 Spatco, despite its having originally brought this action  
15 seeking a declaration that it had properly terminated the contract,  
16 now asserts that its letter to Tesoro terminating the contract was  
17 not a termination, but a modification, and that Tesoro's actions  
18 constitute an anticipatory repudiation of the contract.  
19 Nevertheless, Spatco argues that the contract should be left  
20 "intact," so that it can be awarded attorney's fees as a prevailing  
21 party.

22 I conclude that, regardless of whether the contract between  
23 the parties was repudiated or rescinded, the appropriate remedy on  
24 this record is Spatco's payment to Tesoro of the principal amount  
25 advanced under the Amortization Agreement, plus interest. The  
26 issues which remain for resolution in an evidentiary hearing are  
27



1 the principal sum due to Tesoro, after offsets, and when interest  
2 began to accrue on that amount. Spatco's argument that the contract  
3 between the parties remains in effect and entitles it to claim  
4 attorney's fees as a prevailing party is without merit. It is not  
5 the prevailing party in that sense.

6 An evidentiary hearing to determine the amounts due to Tesoro  
7 is set for October 13, 2005 at 9:30 a.m. Spatco's motion to strike  
8 (doc. # 85) is GRANTED.

9 IT IS SO ORDERED.

10 Dated this \_23rd\_\_ day of August, 2005.

11 /s/ Dennis J. Hubel

12 \_\_\_\_\_  
13 Dennis J. Hubel  
United States Magistrate Judge